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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

RICHMOND COLLEGE *v.* SCOTT-NUCKOLS CO., Inc.

Jan. 16, 1919.

[98 S. E. 1.]

1. Contracts (§ 289*)—Building Contracts—Architect's Certificate.

—Actual fraud is not the only excuse which may be shown by a contractor for failure to produce architect's certificates, and such a certificate, though called for by contract as a condition precedent to payment, is not necessary if it is capriciously or arbitrarily withheld.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 980-981; 16 Va.-W. Va. Enc. Dig. 1315.]

2. Pleading (§ 205 (2)*)—General Demurrer—Declaration—Sufficiency.

—In view of Code 1904, §§ 3271, 3272, requiring demurrers to set out the grounds, held that a declaration on the common counts in assumpsit by a contractor for materials and labor under a written contract was sufficient, as against general demurrer, though showing that the architect's certificate was not procured; the averments as against general demurrer sufficiently excusing nonproduction.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 494; 13 Va.-W. Va. Enc. Dig. 994.]

3. Pleading (§ 235*)—Amendments—Allowance.—While under Act March 27, 1914 (Laws 1914, c. 331), the trial court should permit amendments in furtherance of justice, and a refusal may be reviewed, such amendments are not a matter of right, and should not be permitted to delay, impeach, or embarrass the administration of justice.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 318-319; 1 Va.-W. Va. Enc. Dig. 351-352.]

4. Pleading (§ 236 (3)*)—Amendment—Allowance.—Where defendant had already filed a special plea of set-off, which alleged defects in work done under contracts, held that the denial of leave to file trial amendments, setting up breach of a contract unconnected therewith, as well as plaintiff's insolvency and negligent performance of the contracts sued on, was a proper exercise of the trial court's discretion.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 318-319; 1 Va.-W. Va. Enc. Dig. 351-352.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Set-Off and Counterclaim (§ 34 (1*))—Subject-Matter of Set-Off.—In action on two written contracts, held that under Code 1904, § 3299, defendant could not counterclaim for damages suffered because of plaintiff's breach of a third separate written contract, not connected with the ones sued on.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 517.]

6. Contracts (§ 288*)—Building Contracts—Construction.—A contract for the construction of water and sewer lines held not to require the engineers named to personally inspect all of the work, but to allow them to appoint expert agents for that purpose, and to issue certificates on the agent's report.

7. Contracts (§ 290*)—Building Contracts—Waiver.—Where a contract under which plaintiff was to lay sewer and pipe lines for defendant provided for inspection of the work by defendant's engineers, and defendant acquiesced in inspection by an agent of the engineers specified, such acquiescence was a waiver of defendant's right to require the inspection to be personally made by the engineers themselves.

Error to Hustings Court of Richmond.

Action by the Scott-Nuckols Company, Incorporated, against Richmond College. There was a judgment for plaintiff, and defendant brings error. Affirmed.

A. W. Patterson, of Richmond, for plaintiff in error
O'Flaherty, Fulton & Byrd, for defendant in error.

TAYLOR *v.* COMMONWEALTH.

Jan. 16, 1919.

[98 S. E. 5.]

1. Taxation (§ 98*)—Intangible Personalty of Minors—Nonresident Guardian.—Intangible personal property owned by minors domiciled in Virginia is subject to taxation therein under its Constitution, § 168, and Code 1904, § 491, and Acts 1897-98, c. 707, as amended by Acts 1916, c. 492, unless no situs is fixed by the statute law for the taxation of such property, where minor has guardian who is non-resident.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 101-103; 15 Va.-W. Va. Enc. Dig. 979.]

2. Taxation (§ 98*)—Intangible Personalty of Ward—Situs for Taxation.—Code 1904, § 492, providing by whom property is to be listed and to whom taxed, does not make domicile of guardian situs of intangible personal property of his ward for taxation, though it

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.